

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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Appeal from Horry County

JUL 16 2015

Benjamin H. Culbertson, Circuit Court Judge

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

JAMAR ANTONIO HUGGINS,

APPELLANT

APPELLATE CASE NO. 2014-002022

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in refusing to grant a directed verdict to the charges against appellant when the state failed to present any substantial evidence beyond a reasonable doubt as to the identity of appellant as the suspect because the only witness to testify as to identity was not credible and could not positively identify appellant as the suspect?

STATEMENT OF THE CASE

Appellant was convicted of burglary in the first degree, kidnapping and armed robbery after a jury trial held before the Honorable Benjamin H. Culbertson on September 15 – 17, 2014, in Horry County. Respective sentences of fifteen years, fifteen years, and ten years were imposed. J. Reuben Long, III, Esquire, represented appellant. Donna Elder, Esquire, was the assistant solicitor.

This appeal follows.

## ARGUMENT

The trial court erred in refusing to grant a directed verdict to the charges against appellant when the state failed to present any substantial evidence beyond a reasonable doubt as to the identity of appellant as the suspect because the only witness to testify as to identity was not credible and could not positively identify appellant as the suspect.

Appellant was charged with the burglary, kidnapping and armed robbery of Angela Eckler at her residence on December 20, 2012. Deaungela Shanta Montgomery was used as a decoy that evening so two male suspects could get into the victim's home. The suspect alleged to have been appellant had a hood covering his face and the victim could not identify him.

The only witness to attempt to identify appellant as the suspect was Montgomery who was a crack addict who had little memory of the evening of December 20. She was currently incarcerated on two counts of armed robbery. (R. p. 13, lines 2-9.) She said she could not remember anything. She said appellant did not look like one of the suspects. She said she did not remember him and did not know him. (R. p. 14, line 8 – p. 15, line 18.) She said he was not the same person. She repeatedly said she could not remember or recall through her direct examination. (R. p. 16, line 7 – p. 25, line 22.) On cross-examination, she said appellant was not the person who went in the home invasion with her. (R. p. 26, lines 2-7.) On redirect, she again said appellant was not the person who drove her over to the victim's house. (R. p. 27, lines 10-15.)

At the conclusion of the state's case, defense counsel moved for a directed verdict to the charges because based on Montgomery's testimony a jury could only speculate as to appellant's guilt. (R. p. 79, lines 3-23.) The trial court denied the motion. (R. p. 80, lines 13 – 22.) After the jury returned their verdicts, defense counsel said he would be appealing the decision to deny the directed verdict motion. The trial court admitted it was a close call and that defense counsel may

prevail on that issue. (R. p. 104, lines 4-19; R. p. 106, lines 9-21.) The trial court's decision to deny the directed verdict motion was in error.

Due process as guaranteed by the Fourteenth Amendment requires "that no person shall be made to suffer the onus of a criminal conviction except upon sufficient proof—defined as evidence necessary to convince a trier of fact beyond a reasonable doubt of the existence of every element of the offense." Jackson v. Virginia, 443 U.S. 307, 316, 99 S.Ct. 2781, 2787 (1979).

Our Court has held:

[T]he trial judge is concerned with the existence or non-existence of evidence, not with its weight; and, although he should not refuse to grant the motion where the evidence merely raises a suspicion that the accused is guilty, it is his duty to submit the case to the jury if there be any substantial evidence which reasonably tends to prove the guilt of the accused, or from which his guilt may be fairly and logically deduced. [Emphasis added].

State v. Littlejohn, 228 S.C. 324, 89 S.E.2d 924, 926 (1955); State v. Edwards, 298 S.C. 272, 379 S.E.2d 888 (1989), cert. denied, 493 U.S. 895, 110 S.Ct. 246 (1989).

In applying this standard, our Court has held that evidence which is "sufficient to raise a strong suspicion of the guilt of the accused" is not sufficient to constitute "any evidence from which the guilt of the accused may be fairly and logically deduced." State v. Totherow, 263 S.C. 275, 210 S.E.2d 228, 230 (1974). See, also, State v. Turner, 117 S.C. 470, 109 S.E. 119, 120 (1921). The motion for a directed verdict should be granted, therefore, "where evidence merely raises a suspicion of guilt, or is such to permit the jury to merely conjecture or to speculate as to the accused's guilt." State v. Brown, 267 S.C. 311, 227 S.E.2d 674, 677 (1976), citing State v. Matarazzo, 262 S.C. 662, 207 S.E.2d 93,

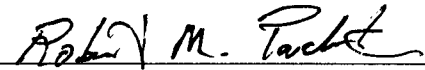
cert. denied, 420 U.S. 945 (1974). “If the evidence is consistent with both innocence and guilt it cannot support a conviction.” United States v. Varoz, 740 F.2d 772, 775 (10<sup>th</sup> Cir. 1984); United States v. Ortiz, 445 F.2d 1100, 1103 (10<sup>th</sup> Cir 1971). Guilt is only to be found when there is a “rationally supportable state of near certitude.” Evans-Smith v. Taylor, 19 F.3d 899, 906 (4<sup>th</sup> Cir 1994).

In this case, the burden upon the state was to prove beyond a reasonable doubt the identification of appellant as the person who committed the crimes. Gibbs v. State, 403 S.C. 484, 496, 744 S.E.2d 170, 176 (2013). Montgomery’s testimony on identification fell far short of meeting the State’s burden in this case.

CONCLUSION

A directed verdict should be granted on all of the charges appellant was convicted of.

Respectfully submitted,

  
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Robert M. Pachak  
Appellate Defender

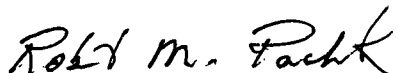
ATTORNEY FOR APPELLANT

This 16<sup>th</sup> day of July, 2015.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

July 16, 2015.



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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Jennifer Ellis Roberts, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 16<sup>th</sup> day of July, 2015.

*Robert M. Pachak*

Robert M. Pachak  
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me  
this 16<sup>th</sup> day of July, 2015.

*Maria Henderson* (L.S.)

Notary Public for South Carolina  
My Commission Expires: July 3, 2023.